

JAN - 8 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Petition of the State Independent Alliance)	WT-00-239
and Independent Telecommunications)	
Group for Declaratory Ruling that)	
Western Wireless' Basic Universal)	
Service in Kansas is Subject to)	
Regulation as Local Exchange Service)	

**REPLY COMMENTS
 OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA) hereby submits its reply comments to the comments submitted on the State Independent Alliance and the Independent Telecommunications Group (collectively the Petitioners) Petition in the above-captioned proceeding.¹ Petitioners seek a declaratory ruling from the Commission that the Basic Universal Service (BUS) offering of WWC Holding Company, Inc. (Western Wireless) in the State of Kansas is a fixed service, and not a Commercial Mobile Radio Service (CMRS), and is thus subject to regulation by the Kansas Corporation Commission (KCC) as a local exchange carrier service, and that such regulation is not preempted by the Communications Act of 1934, as amended (the Act).²

The wireless interests generally rise in opposition to the Petitioners' request to keep from being regulated on the basis that they are CMRS providers. Petitioners seek to

¹ DA-00-2622 (Notice).

² 47 U.S.C. §§151 *et seq.*

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have Western Wireless regulated as a provider of basic local exchange service on the grounds that regulatory parity dictates such a result. What is necessary is an examination of the basis for these competing positions. Such an examination reveals that the underlying issue is not the appropriate regulation to be applied, but the type of service being offered. Thus, the threshold question raised by the Petition is the proper classification of Western Wireless' BUS offering. The debate in the comments about the nature of regulation and the policy issues surrounding whether to impose or exempt the BUS offering from regulation is appropriate only after this threshold issue is decided.

The focus of a determination whether the Western Wireless fixed wireless local loop service is local exchange or wireless service must begin with an analysis of the definitions of "telephone exchange service" and "mobile service" in Section 3 of the Act.³ The elements of the BUS offering have been presented and analyzed in the Petition and the comments. As USTA stated in its comments, the controlling factor in determining the category of a service offering is not the technology used, but the nature of the service itself. Without repeating the various elements, it is clear that the purpose of this service is to offer basic service in rural areas that lack wireline service, not to provide a competitive commercial mobile service, and that the elements of the offering qualify it as a telephone exchange service. Western Wireless acknowledges that its BUS offering is a "service package that consumers will view as comparable to the basic telephony offered by ILECs...."⁴

³ 47 U.S.C. §153 (47) and (27).

⁴ Opposition of Western Wireless at 4-5.

On the other hand, Western Wireless attempts to justify its claim that its BUS offering should be classified as wireless on the argument that all of its “service packages” use the same cellular spectrum and network facilities.⁵ This argument is rebutted by the fact that it is the nature of the service, not the facilities used, that is controlling in determining the issue raised by the Petition. Furthermore, Western Wireless admits that its BUS customers in Kansas comprise only 0.857 percent of its customers in that state, and uses this fact as a basis for arguing that the Commission should not separate this offering from its cellular services.⁶ This argument is irrelevant to the issue before the Commission. Each service must be evaluated separately according to the criteria that are relevant to that particular offering. In this case, the elements of the BUS offering are aligned with those of telephone exchange service.

Consistent with the nature of Western Wireless’ fixed wireless local loop service is the fact that the KCC has already designated the Western Wireless offering as an Eligible Telecommunications Carrier (ETC) for non-rural areas of Kansas. A similar Western Wireless petition for ETC designation in the rural areas is pending with the KCC. This means that, pursuant to Section 214(e) of the Act,⁷ Western Wireless has been found to be “a common carrier designated as an eligible telecommunications carrier,” thereby providing a certain level of prescribed telecommunications service throughout the designated service area. This designation also means that Western

⁵ *Id.* at 12.

⁶ *Id.*

⁷ 47 U.S.C. §214(e).

Wireless is eligible to receive universal service support in accordance with Section 254 of the Act.⁸

Once the determination that Western Wireless' BUS offering is a telephone exchange service, the nature of regulation can then properly be considered. USTA does not advocate a particular level of regulation; rather, we seek regulatory parity among the various providers of like services. As stated in our comments, USTA has repeatedly advocated that the Commission not adopt asymmetric regulatory requirements which apply only to incumbent LECs, but rather establish a level playing field for all participants.⁹ By doing otherwise, the Commission handicaps the market, limits competition and reduces consumer benefits. Both CTIA and Western Wireless argue for regulatory parity, up to a point.¹⁰ CTIA specifically states that "the ultimate goal of policy makers in this era of transition from local exchange monopoly to competition should be to remove all unnecessary restrictions imposed upon telecommunications carriers."¹¹ USTA maintains that the presence of a competitive offering in a particular market, such as BUS, justifies the removal of regulation of the incumbent carrier and provides a level playing field for all carriers in that market.

⁸ 47 U.S.C. §254.

⁹ See USTA Petition for Rulemaking, ASD File No. 98-64, filed September 30, 1998.

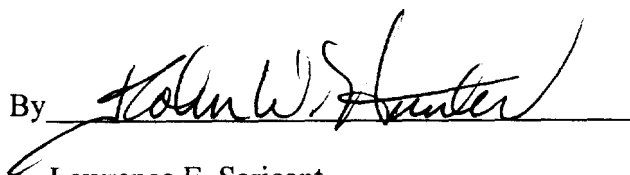
¹⁰ Comments of the Cellular Telecommunications & Internet Association (CTIA) at 9-10; Comments of Western Wireless at 26.

¹¹ Comments of CTIA at 10.

In conclusion, USTA requests that the Commission consider these reply comments and find that the Western Wireless Basic Universal Service is a fixed wireless service, akin to local exchange carrier service, and not CMRS for regulatory purposes. Furthermore, USTA continues to advocate that the Commission treat similar providers of like services symmetrically for regulatory purposes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on January 8, 2001, Reply Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.



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